

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 281 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

DHARAMJI MALAJI THAKORE

Versus

DISTRICT MAGISTRATE

Appearance:

MR DK ACHARYA for Petitioner

M/S PATEL ADVOCATES for Respondent No. 1

MR KT DAVE Ld. AGP for Respondent No. 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 25/04/2000

ORAL JUDGEMENT

1. Dharmaji Malaji Thakor of Samadhi, Motavas, Tal. Palanpur, District Banaskantha came to be detained by virtue of an order passed by the District Magistrate, Banaskantha at Palanpur on December 10, 1999 in exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, (PASA Act, for short).

2. The detaining authority considered the possibility of resorting to less drastic remedies, but found that in order to immediately prevent the petitioner from pursuing his activities detrimental to public order, he is required to be detained under PASA Act.

3. The petitioner-detenu challenges the order of detention on various grounds, however, Mr. Acharya learned advocate for the petitioner has placed reliance on the ground of non-consideration of relevant material, non-application of mind and resultant improper exercise of powers under sec. 3(1) of the PASA Act. In order to substantiate his say, Mr Acharya submitted that a Special Civil Suit No. 64/1999 was filed by the detenu in the Court of Civil Judge (SD) at Palanpur against the Collector, District Development Officer and other concerned officers. In respect of this very property, summons and notices in respect of injunction were served on the authorities. The suit was filed in July, 1999. Prior to that, notice was served in December, 1998 and the impugned order came to be passed on December, 1999. Despite this, neither the notice nor the suit was placed before the detaining authority for its consideration nor the detaining authority considered this existence of the suit while passing the order of detention. Mr Acharya therefore, submitted that relevant material is not considered by the detaining authority while passing the order of detention and, therefore, the order of detention would therefore stand vitiated and the same may be quashed and set aside.

4. Mr KT Dave, learned AGP has opposed this petition.

5. Considering the rival side contentions, the contention raised by Mr. Acharya deserves acceptance. Undisputedly, a civil litigation is pending in a competent civil court between the same parties in respect of the same properties for which the petitioner-detenu is branded as land grabber. This aspect is not placed before the detaining authority along with the proposal by the sponsoring authority. The detaining authority has not considered this aspect while passing the order. If it was placed, possibility of the detaining authority not passing the order of detention cannot be ruled out. The decision making process is therefore adversely affected on account of non-placement and non-consideration of the relevant material before and by the detaining authority. The order of detention, therefore, would stand vitiated and cannot be supported in law by this Court.

6. The petition deserves to be allowed for the foregoing reasons and the same is allowed. The impugned order of detention passed by the District Magistrate, Banaskantha at Palanpur on 10.12.99 in respect of Dharmaji Malaji Thakor is hereby quashed and set aside.

The detenu be set at liberty forthwith, if not required
for any other case. Rule is made absolute with no order
as to costs. DS Permitted.

(A.L. DAVE, J.)

mandora/